



MASTER SUBSCRIPTION AGREEMENT

THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES.

IF YOU REGISTER FOR A FREE TRIAL FOR OUR SERVICES OR FOR FREE SERVICES, THE APPLICABLE PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL OR THOSE FREE SERVICES.

BY ACCEPTING THIS AGREEMENT, BY CLICKING A BOX INDICATING YOUR ACCEPTANCE; BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT; OR, FOR FREE SERVICES, BY USING SUCH SERVICES, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on 15 September, 2022. It is effective between You and Us as of the date of Your accepting this Agreement.

SECTION 1) MASTER SUBSCRIPTION AGREEMENT

1) DEFINITIONS

- a) "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
- b) "Agreement" means this Master Subscription Agreement.
- c) "Beta Services" means GW POS INC. services or functionality that may be made available to You to try at Your option at no additional charge which is clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.
- d) "Content" means information obtained by GW POS INC. from publicly available sources or third-party content providers and made available to You through the Services, Beta Services or pursuant to an Order Form, as more fully described in the Documentation.
- e) "Documentation" means the applicable Service's documentation, and its usage guides and policies, as updated from time to time, accessible via help.focusca.com or login to the applicable Service.
- f) "Malicious Code" means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.
- g) "Marketplace" means an online directory, catalog, marketplace of applications or independent company marketing itself as offering an integrated application that interoperates with the Services.
- h) "Non-GW POS INC. Application" means a Web-based, mobile, offline or other software process or functionality that is provided by You or a third party and interoperates with a Service, including, for example, an application that is developed by or for You, is listed on a Marketplace, or is identified as FOCUS Beta or by a similar designation.
- i) "Order Form" means an ordering document or online order specifying the Services to be provided hereunder that is entered into between You and Us or any of Our Affiliates, including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.
- j) "Free Services" means Services that GW POS INC. makes available to You free of charge. Free Services exclude Services offered as a free trial and Purchased Services.
- k) "Purchased Services" means Services that You or Your Affiliate purchase under an Order Form, as distinguished from Free Services or those provided pursuant to a free trial.
- l) "Services" means the products and services that are ordered by You under an Order Form or provided to You free of charge (as applicable) or under a free trial, and made available online by Us, including associated GW POS INC. offline or mobile components, as described in the Documentation. "Services" exclude Content and Non-GW POS INC. Applications.
- m) "User" means, in the case of an individual accepting these terms on his or her own behalf, such individual, or, in the case of an individual accepting this Agreement on behalf of a company or other legal entity, an individual who is authorized by You to use a Service, for whom You have purchased a subscription (or in the case of any Services provided by Us without charge, for whom a Service has been provisioned), and to whom You (or, when applicable, We at Your request) have supplied a user identification and password (for Services utilizing authentication). Users may include, for example, Your employees, consultants, contractors and agents, and third parties with which You transact business.
- n) "We," "Us" or "Our" means The GW POS INC. company described in Section 14 (Whom You Are Contracting With, Notices, Governing Law and Jurisdiction).
- o) "You" or "Your" means, in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity which have entered into Order Forms.
- p) "Your Data" means electronic data and information submitted by or for You to the Services, excluding Content and Non-GW POS INC. Applications.

2) FREE TRIAL AND FREE SERVICES

- a) Free Trial. If you register on Our website for a free trial, We will make one or more Services available to You on a trial basis free of charge until the earlier of (a) the end of the free trial period for which You registered to use the applicable Service(s), or (b) the start date of any Purchased Service subscriptions ordered by You for such Service(s), or (c) termination by Us in our sole discretion. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.
- b) ANY DATA YOU ENTER INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR YOU, DURING YOUR FREE TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL, PURCHASE APPLICABLE UPGRADED SERVICES, OR EXPORT SUCH DATA, BEFORE THE END OF THE TRIAL PERIOD. YOU CANNOT TRANSFER DATA ENTERED OR CUSTOMIZATIONS MADE DURING THE FREE TRIAL TO A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL (E.G., FROM ENTERPRISE EDITION TO PROFESSIONAL EDITION); THEREFORE, IF YOU PURCHASE A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL, YOU MUST EXPORT YOUR DATA BEFORE THE END OF THE TRIAL PERIOD OR YOUR DATA WILL BE PERMANENTLY LOST.
- c) NOTWITHSTANDING SECTIONS 10 (REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS) AND 11.a (INDEMNIFICATION BY US), DURING THE FREE TRIAL THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND GW POS INC. SHALL HAVE NO INDEMNIFICATION OBLIGATIONS WITH RESPECT TO THE SERVICES FOR THE FREE TRIAL PERIOD. WITHOUT LIMITING THE FOREGOING, GW POS INC. AND ITS AFFILIATES AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO YOU THAT: (A) YOUR USE OF THE SERVICES DURING THE FREE TRIAL PERIOD WILL MEET YOUR REQUIREMENTS, (B) YOUR USE OF THE SERVICES DURING THE FREE TRIAL PERIOD WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (C) USAGE DATA PROVIDED DURING THE FREE TRIAL PERIOD WILL BE ACCURATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION 12.a (LIMITATION OF LIABILITY), YOU SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO GW POS INC. AND ITS AFFILIATES FOR ANY DAMAGES ARISING OUT OF YOUR USE OF THE SERVICES DURING THE FREE TRIAL PERIOD, ANY BREACH BY YOU OF THIS AGREEMENT AND ANY OF YOUR INDEMNIFICATION OBLIGATIONS HEREUNDER.
- d) Please review the applicable Service's Documentation during the trial period so that You become familiar with the features and functions of the Services before You make Your purchase.
- e) Free Services. GW POS INC. may make Free Services available to You. Use of Free Services is subject to the terms and conditions of this Agreement. In the event of a conflict between this Section 2.e (Free Services) and any other portion of this Agreement, this section shall control. Please note that Free Services are provided to you without charge up to certain limits as described in the Documentation. Usage over these limits requires your purchase of additional resources or services. You agree that GW POS INC., in its sole discretion and for any or no reason, may terminate your access to the Free Services or any part thereof. You agree that any termination of your access to the Free Services may be without prior notice, and you agree that GW POS INC. will not be liable to you or any third party for such termination. You are solely responsible for exporting Your Data from the Free Services prior to termination of Your access to the Free Services for any reason, provided that if We terminate your account, except as required by law We will provide you a reasonable opportunity to retrieve Your Data.
- f) NOTWITHSTANDING SECTIONS 10 (REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS) AND 10.1 (INDEMNIFICATION BY US), THE FREE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND GW POS INC. SHALL HAVE NO INDEMNIFICATION OBLIGATIONS WITH RESPECT TO THE FREE SERVICES. WITHOUT LIMITING THE FOREGOING, GW POS INC. AND ITS AFFILIATES AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO YOU THAT: (A) YOUR USE OF THE FREE SERVICES WILL MEET YOUR REQUIREMENTS, (B) YOUR USE OF THE FREE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (C) USAGE DATA PROVIDED THROUGH THE FREE SERVICES WILL BE ACCURATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION 12.a (LIMITATION OF LIABILITY), YOU SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO GW POS INC. AND ITS AFFILIATES FOR ANY DAMAGES ARISING OUT OF YOUR USE OF THE FREE SERVICES, ANY BREACH BY YOU OF THIS AGREEMENT AND ANY OF YOUR INDEMNIFICATION OBLIGATIONS HEREUNDER.

3) OUR RESPONSIBILITIES

- a) Provision of Purchased Services. We will (a) make the Services and Content available to You pursuant to this Agreement and any applicable Order Forms, (b) provide applicable GW POS INC. standard support for the Purchased Services to You at no additional charge, and/or upgraded support if purchased, (c) use commercially reasonable efforts to make the online Purchased Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which We shall give advance electronic notice), and (ii) any unavailability caused by circumstances beyond Our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), internet service provider failure or delay, Non-GW POS INC. Application, or denial of service attack.
- b) Protection of Your Data. We will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, as described in the Documentation. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Your Data by Our personnel except (a) to provide the Purchased Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 9.b (Compelled Disclosure) below, or (c) as You expressly permit in writing.
- c) Our Personnel. We will be responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein.
- d) Beta Services. From time to time, We may make Beta Services available to You at no charge. You may choose to try such Beta Services or not in Your sole discretion. Beta Services are intended for evaluation purposes and not for production use, are not supported, and may be subject to additional terms. Beta Services are not considered "Services" under this Agreement, however, all restrictions, Our reservation of rights and Your obligations concerning the Services, and use of any related Non-GW POS INC. Applications and Content, shall apply equally to Your use of Beta Services. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available without the applicable Beta Services designation. We may discontinue Beta Services at any time in Our sole discretion and may never make them generally available. We will have no liability for any harm or damage arising out of or in connection with a Beta Service.

4) USE OF SERVICES AND CONTENT

- a) Subscriptions. Unless otherwise provided in the applicable Order Form or Documentation, (a) Purchased Services and access to Content are purchased as subscriptions, (b) subscriptions for Purchased Services may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions.
- b) Usage Limits. Services and Content are subject to usage limits, including, for example, the quantities specified in Order Forms and Documentation. Unless otherwise specified, (a) a quantity in an Order Form refers to Users, and the Service or Content may not be accessed by more than that number of Users, (b) a User's password may not be shared with any other individual, and (c) except as set forth in an Order Form, a User identification may only be reassigned to a new individual replacing one who will no longer use the Service or Content. If You exceed a contractual usage limit, We may work with You to seek to reduce Your usage so that it conforms to that limit. If, notwithstanding Our efforts, You are unable or unwilling to abide by a contractual usage limit, You will execute an Order Form for additional quantities of the applicable Services or Content promptly upon Our request, and/or pay any invoice for excess usage in accordance with Section 7.b (Invoicing and Payment).
- c) Your Responsibilities. You will (a) be responsible for Users' compliance with this Agreement, Documentation and Order Forms, (b) be responsible for the accuracy, quality and legality of Your Data, the means by which You acquired

- Your Data and Your use of Your Data with our Services, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content, and notify Us promptly of any such unauthorized access or use, (d) use Services and Content only in accordance with this Agreement, Documentation, Order Forms and applicable laws and government regulations, and (e) comply with terms of service of any Non-GW POS INC. Applications with which You use Services or Content.
- d) Usage Restrictions. You will not (a) make any Service or Content available to anyone other than Users, or use any Service or Content for the benefit of, anyone other than You, unless expressly stated otherwise in an Order Form or the Documentation, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering, (c) use a Service or Non-GW POS INC. Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service or Non-GW POS INC. Application to store or transmit Malicious Code, interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or Content or its related systems or networks, (g) permit direct or indirect access to or use of any Service or Content in a way that circumvents a contractual usage limit, or to access or use any of Our intellectual property except as permitted under this Agreement, an Order Form, or the Documentation, (h) modify, copy, or create derivative works based on a Service or any part, feature, function or user interface thereof, (i) copy Content except as permitted herein or in an Order Form or the Documentation, (j) frame or mirror any part of any Service or Content, other than framing on Your own intranet or otherwise for Your own internal business purposes or as permitted in the Documentation, or (k) disassemble, reverse engineer, or decompile a Service or Content, or access it to build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Service, (3) copy any ideas, features, functions or graphics of the Service or (4) determine whether the Services are within the scope of any patent. Any use of the Services in breach of this Agreement, Documentation or Order Forms, by You or Users that in Our judgment threatens the security, integrity or availability of Our services, may result in Our immediate suspension of the Services, however We will use commercially reasonable efforts under the circumstances to provide You with notice and an opportunity to remedy such violation or threat prior to such suspension.
- e) Removal of Content and Non-GW POS INC. Applications. If we are required by a licensor to remove Content, or receive information that Content provided to You may violate applicable law or third-party rights, We may so notify You and in such event, You will promptly remove such Content from Your systems. If We receive information that a Non-GW POS INC. Application hosted on a Service by You may violate Our [Acceptable Use and External-Facing Services Policy](#) or applicable law or third-party rights, We may so notify You and in such event You will promptly disable such Non-GW POS INC. Application or modify the Non-GW POS INC. Application to resolve the potential violation. If You do not take required action in accordance with the above, We may disable the applicable Content, Service and/or Non-GW POS INC. Application until the potential violation is resolved.
- 5) NON-GW POS INC. PROVIDERS
- a) We or third parties may make available (for example, through a Marketplace or otherwise) third-party products or services, including, for example, Non-GW POS INC. Applications and implementation and other consulting services. Any acquisition by You of such products or services, and any exchange of data between You and any Non-GW POS INC. provider, product or service is solely between You and the applicable Non-GW POS INC. provider. We do not warrant or support Non-GW POS INC. Applications or other Non-GW POS INC. products or services, whether or not they are designated by Us as "certified" or otherwise, unless expressly provided otherwise in an Order Form.
- b) Non-GW POS INC. Applications and Your Data. If You choose to use a Non-GW POS INC. Application with a Service, You grant Us permission to allow the Non-GW POS INC. Application and its provider to access Your Data as required for the interoperability of that Non-GW POS INC. Application with the Service. We are not responsible for any disclosure, modification or deletion of Your Data resulting from access by such Non-GW POS INC. Application or its provider.
- c) Interoperability with Non-GW POS INC. Applications. The Services may contain features designed to interoperate with Non-GW POS INC. Applications. To use such features, You may be required to obtain access to such Non-GW POS INC. Applications from their providers, and may be required to grant Us access to Your account(s) on such Non-GW POS INC. Applications. We cannot guarantee the continued availability of such Service features, and may cease providing them without entitling You to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-GW POS INC. Application ceases to make the Non-GW POS INC. Application available for interoperation with the corresponding Service features in a manner acceptable to Us.
- 6) FEES AND PAYMENT FOR PURCHASED SERVICES
- a) Fees. You will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Services and Content subscriptions purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term.
- b) Invoicing and Payment. You will provide Us with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Us. If You provide credit card information to Us, You authorize Us to charge such credit card for all Purchased Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in Section 13.b (Term of Purchased Subscriptions). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, We will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.
- c) Overdue Charges. If any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 7.b (Invoicing and Payment).
- d) Suspension of Service and Acceleration. If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full. Other than for customers paying by credit card or direct debit whose payment has been declined, We will give You at least 10 days' prior notice that Your account is overdue, in accordance with Section 14.b (Manner of Giving Notice) for billing notices, before suspending services to You.
- e) Payment Disputes. We will not exercise Our rights under Section 7.c (Overdue Charges) or 7.d (Suspension of Service and Acceleration) above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.
- f) Taxes. Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this Section 7.b, We will invoice You and You will pay that amount unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.
- g) Future Functionality. You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependency on any oral or written public comments made by Us regarding future functionality or features.
- 7) PROPRIETARY RIGHTS AND LICENSES
- a) Reservation of Rights. Subject to the limited rights expressly granted hereunder, We and Our Affiliates, Our licensors and Content Providers reserve all of Our/their right, title and interest in and to the Services and Content, including all of Our/their related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.
- b) Access to and Use of Content. You have the right to access and use applicable Content subject to the terms of applicable Order Forms, this Agreement and the Documentation.
- c) License to Host Your Data and Applications. You grant Us, Our Affiliates and applicable contractors a worldwide, limited-term license to host, copy, display and use any Non-GW POS INC. Applications and program code created by or for You using a Service or for use by You with the Services, and Your Data, each as reasonably necessary for Us to provide, and ensure proper operation of, our Services and associated systems in accordance with this Agreement. Subject to the limited licenses granted herein, We acquire no right, title or interest from You or Your licensors under this Agreement in or to any of Your Data, Non-GW POS INC. Application or such program code.
- d) License to Use Feedback. You grant to Us and Our Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into Our and/or Our Affiliates' services any suggestion, enhancement request, recommendation, correction or other feedback provided by You or Users relating to the operation of Our or Our Affiliates' services.
- e) Federal Government End Use Provisions. We provide the Services, including related software and technology, that may be delivered to a federal government end user, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as specified in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227- 7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Us to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.
- 8) CONFIDENTIALITY
- a) Definition of Confidential Information. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your Data; Our Confidential Information includes the Services and Content; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section. Notwithstanding the foregoing, We may disclose the terms of this Agreement and any applicable Order Form to a subcontractor or Non-GW POS INC. Application Provider to the extent necessary to perform Our obligations to You under this Agreement, under terms of confidentiality materially as protective as set forth herein.
- b) Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.
- 9) REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS
- a) Representations. Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- b) Our Warranties. We warrant that during an applicable subscription term (a) this Agreement, the Order Forms and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Your Data, (b) We will not materially decrease the overall security of the Services, (c) the Services will perform materially in accordance with the applicable Documentation, and (d) subject to the "Integration with Non-GW POS INC. Applications" section above, we will not materially decrease the overall functionality of the Services. For any breach of a warranty above, your exclusive remedies are those described in the "Termination" and "Refund or Payment upon Termination" sections below.
- c) Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT AND BETA SERVICES ARE PROVIDED "AS IS," EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.
- 10) MUTUAL INDEMNIFICATION
- a) Indemnification by Us. We will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that any Purchased Service infringes or misappropriates such third party's intellectual property rights (a "Claim Against You"), and will indemnify You from any damages, attorney fees and costs finally awarded against You as a result of, or for amounts paid by You under a settlement approved by Us in writing of, a Claim Against You, provided You promptly give Us written notice of the Claim Against You, (b) give Us sole control of the defense and settlement of the Claim Against You (except that We may not settle any Claim Against You unless it unconditionally releases You of all liability), and (c) give Us all reasonable assistance, at Our expense. If we receive information about an infringement or misappropriation claim related to a Service, We may in Our discretion and at no cost to You (i) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching Our warranties under "GW POS INC. Warranties" above, (ii) obtain a license for Your continued use of that Service in accordance with this Agreement, or (iii) terminate Your subscriptions for that Service upon 30 days' written notice and refund You any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply if (1) the allegation does not state with specificity that our Services are the basis of the Claim Against You; (2) a Claim Against You arises from the use or combination of our Services or any part thereof with software, hardware, data, or processes not provided by Us, if our Services or use thereof would not infringe without such combination; (3) a Claim Against You arises from Services under an Order Form for which there is no charge; (4) a Claim against You is based on traditional online storefront commerce functionality that is or was in general use in the industry; or (5) a Claim Against You arises from Content, a Non-GW POS INC. Application or Your use of the Services in violation of this Agreement, the Documentation or applicable Order Forms.
- b) Indemnification by You. You will defend Us and Our Affiliates against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that (a) any of Your Data or Your use of Your Data with our Services, a Non-GW POS INC. Application provided by You, or (c) the combination of a Non-GW POS INC. Application provided by You and used with Our Services, infringes or misappropriates such third party's intellectual property rights, or arising from Your use of the Services or Content in an unlawful manner or in violation of the Agreement, the Documentation, or Order Form (each a "Claim Against Us"), and You will indemnify Us from any damages, attorney fees and costs finally

awarded against Us as a result of, or for any amounts paid by Us under a settlement approved by You in writing of, a Claim Against Us, provided We (a) promptly give You written notice of the Claim Against Us, (b) give You sole control of the defense and settlement of the Claim Against Us (except that You may not settle any Claim Against Us unless it unconditionally releases Us of all liability), and (c) give You all reasonable assistance, at Your expense.

c) Exclusive Remedy. This Section 11 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 11.

11) LIMITATION OF LIABILITY

- a) Limitation of Liability. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU AND YOUR AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY BUT WILL NOT LIMIT YOUR AND YOUR AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.
- b) Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.
- c) TERM AND TERMINATION
- d) Term of Agreement. This Agreement commences on the date You first accept it and continues until all subscriptions hereunder have expired or have been terminated.
- e) Term of Purchased Subscriptions. The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 90 days before the end of the relevant subscription term. The per-unit pricing during any renewal term will increase by up to 7% above the applicable pricing in the prior term, unless We provide You notice of different pricing at least 60 days prior to the applicable renewal term. Except as expressly provided in the applicable Order Form, renewal of promotional or one-time priced subscriptions will be at Our applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume for any Services has decreased from the prior term will result in re-pricing at renewal without regard to the prior term's per-unit pricing.
- f) Termination. A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- g) Refund or Payment upon Termination. If this Agreement is terminated by You in accordance with Section 13.c (Termination), We will refund You any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by Us in accordance with Section 13.c, You will pay any unpaid fees covering the remainder of the term of all Order Forms. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.
- h) Your Data Portability and Deletion. Upon request by You made within 30 days after the effective date of termination or expiration of this Agreement, We will make Your Data available to You for export or download as provided in the Documentation. After such 30-day period, We will have no obligation to maintain or provide any Your Data, and as provided in the Documentation We will thereafter delete or destroy all copies of Your Data in Our systems or otherwise in Our possession or control, unless legally prohibited.
- i) Surviving Provisions. The sections titled "Free Services," "Fees and Payment," "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Your Data Portability and Deletion," "Removal of Content and Non-GW POS INC. Applications," "Surviving Provisions" and "General Provisions" will survive any termination or expiration of this Agreement.

12) WHOM YOU ARE CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION

- a) General. You are contracting with Focus POS of Arizona, LLC an Arizona Limited Liability Company. Notices to Us should be sent to GW POS Inc. Attn: Legal Operations, 48 Waterworks Way Irvine California 92618, United States of America. The governing law of this contract is California and controlling United States federal laws. Orange County Superior Court, California, USA has exclusive jurisdiction of this Agreement, its Execution and Yours and Our obligations herein.
- b) Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim ("Legal Notices"), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to You will be addressed to the relevant billing contact designated by You. All other notices to You will be addressed to the relevant Services system administrator designated by You.
- c) Agreement to Governing Law and Jurisdiction. Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.
- d) No Agency. For the avoidance of doubt, we are entering into this Agreement as principal and not as agent for any other GW POS Inc. company. Subject to any permitted Assignment under Section 15.d, the obligations owed by Us under this Agreement shall be owed to You solely by Us and the obligations owed by You under this Agreement shall be owed solely to Us.

13) GENERAL PROVISIONS

- a) Export Compliance. The Services, Content, other technology We make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use any Service or Content in a U.S. embargoed country (currently Cuba, Iran, North Korea, Sudan, Syria or Crimea) or in violation of any U.S. export law or regulation.
- b) Anti-Corruption. You agree that You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If you learn of any violation of the above restriction, you will use reasonable efforts to promptly notify Our Legal Department at: Support@mvpavco.com
- c) Entire Agreement and Order of Precedence. This Agreement is the entire agreement between You and Us regarding Your use of Services and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Except as otherwise provided herein, no modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in Your purchase order or in any other of Your order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) this Agreement, and (3) the Documentation.
- d) Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (together with all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, We will refund to You any prepaid fees allocable to the remainder of the term of all subscriptions for the period after the effective date of such termination. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- e) Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- f) Third-Party Beneficiaries. There are no third-party beneficiaries under this Agreement.
- g) Waiver. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.
- h) Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

SECTION 2) HELPDESK SERVICE AGREEMENT

THIS AGREEMENT COVERS HOW YOU WILL OBTAIN SOFTWARE-LEVEL SUPPORT FOR OUR PRODUCTS AND SERVICES. THIS AGREEMENT APPLIES TO ALL CUSTOMERS WITH A FOCUSCLOUD SUBSCRIPTION AND/OR A FOCUS HELPDESK SERVICE AGREEMENT.

1) Description of Software Support

a) Software Support

- i) Subject to the terms and conditions set forth below, Support Provider agrees to provide, and the Customer agrees to purchase Software support, with respect to the licensed computer programs (the "Licensed Programs") set forth in Attachment B -or- original System invoice and/or subsequent product invoices.
- ii) In providing Software Support to the Customer, Support Provider agrees to perform the following services:
- (1) Correct any defects or replace any of the Licensed Programs found to be in substantial non-conformance with the program specifications.
 - (2) Provide the Customer with enhancements, as they become available, to the Licensed Programs. Support Provider reserves the right to determine what constitutes an enhancement; enhancements billable to Support Provider are billable to Customer.
 - (3) Provide reasonable remote technical assistance to the Customer with respect to use of the Licensed Programs;
- iii) Any assistance required to fulfill Support Provider's obligations under this Agreement, will be provided at no additional charge unless such assistance is found to be the result of hardware failure, user error, neglect or negligence. Assistance required because of such failure, user error, neglect or negligence is considered *Billable Services* as defined below (Section 3. j.)
- iv) Support rendered under this Agreement is provided remotely via Industry-standard remote access methods, email support, and/or telephone support. This Agreement does not provide the Customer with any support rendered at the Systems' Installed Location. Support rendered at the Systems' Installed Location is considered *Billable Services* as defined below (Section 3. j.)
- v) Software support rendered in the form of system usage training will be provided to the Customer as needed and requested by the Customer. The Support Provider, at its discretion, may choose the best training method for the Customer based upon established best practices for the requested training. The Customer may request training to be performed at the Systems' Installed Location, however fulfillment of requests is subject to the Support Provider's training resource availability and resource schedule. Requests for training conducted at the Systems' Installed Location or location other than the Support Provider's location is considered *Billable Services* as defined below (Section 3. j.)
- vi) The Support Provider agrees to provide regular access to electronic training material, provided in form of web-resource links and electronic documents.

b) Excluded Service

- i) Support Provider is not obligated to adjust sales tax, employee configuration or employee hours.
- ii) Support Provider is prohibited from adjusting or editing the timecard records of employees.
- iii) Customer shall make effort to follow instructions of Support Provider and provide troubleshooting assistance as requested by the Support Provider upon generation of a Support Request. Support Requests will be considered *Billable Services* as defined below (Section 3. j.) if Customer fails to follow the instructions of the Support Provider or fails to assist in standard troubleshooting steps as requested by Support Provider.
- iv) Support Provider is prohibited from performing "management-level" duties such as check adjustments, refunds, payment reapplications, voids, discount or item price adjustments; except in those circumstances were doing so resolved a System problem.
- v) Support Provider is not obligated to provide service under the Agreement for service necessitated by vandalism, theft, misuse, hardware malfunction, neglect, acts of third parties, fire, water, casualty, act of God, mob violence, labor disputes, malfunction of affiliated equipment, unauthorized modification of the software, electrical failure, accidents, climatic conditions, or from other causes unrelated to the ordinary operation of the software. This Agreement is void if service is performed on the software by unauthorized individuals, or if attempts are made to modify the software or use the software in a manner not set out in the instruction manual or license agreement. Should it be necessary to perform services outlined in this agreement at the Customer's site, Customer shall be responsible for actual out-of-pocket expenses incurred in travel.

c) Response Time

- i) There is no guarantee regarding the response time to a service call from the Customer. Support Provider will respond to Software Support Requests in the order received. Support Provider, however, has established Service Level Agreements & Priorities for each Support Request. While System stability and reliability are of the utmost concern to the Support Provider, errors inconveniencing the operation of the Customer may not directly impact Support Provider priority ranking.
- (1) Critical Priority - A software error renders the entire system inoperable. Resources assigned within fifteen (15) minutes. Resources continue to work on the problem from point of assignment until completion, regardless of current business hours. Average resolution time is one (1) hour. Critical Priority will only be assigned to Support Requests submitted via telephone call to the Support Provider. Example: All POS workstations are unable to run the POS Software.
 - (2) High Priority - A software error is detected for a system module which seriously impairs systems operation but does not render the entire system inoperable. Resources are assigned within one (1) hour and remain assigned until completed, work continues during normal business hours. Average resolution time is four (4) hours. Example: All POS printers (receipt and remote) are incapable of printing order tickets.
 - (3) Medium Priority - Minor problem impacting usage of specific features in the System. Resources are assigned within twenty-four (24) hours and will work towards a resolution during business hours. Average resolution time is seventy-two (72) hours. Example: Credit card processing is unavailable due to internet or network outage.
 - (4) Low Priority - System usage training and minor problems. Resources are assigned within forty-eight (48) hours and will work towards resolution during business hours. Example: Menu item not routing to the appropriate printer.

- (5) Enhancement Request – New functions and/or existing function modification to the Software Package. Support Provider reserves the right to determine software enhancement request relevance to the package and will relay, at its discretion, software enhancement requests to the Software Developer.
- d) Excused Performance
- Support Provider shall not be liable for any failure to perform or delayed performance of any obligation under the Agreement if such performance is prevented, hindered or delayed for any cause beyond the reasonable control of Support Provider, including, without limitation, any labor dispute, strike or other industrial disturbance, act of God, flood, shortage of materials, earthquakes, casualty, war, act of public enemy, riot, insurrection, embargo law, blockage, action, restriction or regulation or order of any government, government agency or subdivision thereof, any restriction due to Payment Card Industry regulations or best practices, or climatic conditions.
 - Support Provider is not responsible or liable for data network operation, structural wiring (low-voltage or high-voltage), Internet service and/or electrical service. Support Requests rendered because of the afore referenced items are considered *Billable Services* as defined below (Section 3. j.).
- e) Remote Support
- The Support Provider maintains a system which allows remote access to the System ("Remote Access"). Client shall not have the right to limit Remote Access by the Support Provider's employees. The Support Provider shall have the right from time to time to alter the means for Remote Access, including, without limitation, designating the means of access and user names/numbers and passwords. Customer ability to utilize the Support Provider's Remote Access system may incur additional fees.
 - The Customer will maintain operable standard high-speed internet access to the installed system to allow for remote support and administration.
- f) Breach or Default
- If customer does not pay the amounts due hereunder or breaches any terms of this agreement or any other Agreement with Support Provider, Support Provider may terminate this agreement effective upon written notice to the Customer.
 - Customers or agents of Customers who are disrespectful, misleading or act in an unprofessional manner to Support Provider or its Agents are in breach of the Agreement and the Agreement will be terminated.
- 2) General
- Free access - Support Provider shall have free access to the equipment and software to perform service thereon.
 - Sales Taxes - Customer agrees to pay all sales taxes where applicable for services rendered pursuant to this agreement.
 - Training - Customer shall provide training for standard users of the System. Support Provider is not responsible for providing training to standard users. Support Provider agrees to provide employees classified as owners or managers (e.g. general manager, ownership partner, assistant manager) with training on advanced system usage and operation. Standard users are defined as employees or contractors of the Customer who are required to use the System as part of their standard job duties (e.g. cashier, bartender, server)
 - Credit Card Security & PCI Compliance - Customer shall abide by and adhere to all Payment Card Industry Best Practices as outlined at the Payment Card Industry Security Council website www.pcisecuritystandards.org. Failure to comply with Payment Card Industry best practices will void this agreement. The Support Provider is not responsible for any information security breaches, malicious usage of credit card data or damage to information contained within the Licensed Software.
 - Assignment - The Customer's rights and obligations created under this Agreement shall not be assignable by the Customer, in whole or in part, by operation of law or otherwise, without the prior written consent of the Support Provider, which shall not be unreasonably withheld. Vendor may terminate this Agreement if the equipment is relocated.
 - Construction - The execution of this Support Agreement shall not effect, in any way, any of the terms and conditions of the Software License granted to the Customer pursuant to the Software License Agreement between the parties.
 - Binding Effect - The Customer agrees that this Agreement binds the named Customer and each of its employees, agents and representatives, as well as its successors, assigns and trustees.
 - Written Agreement - This Agreement supersedes any prior Agreement written or oral between the parties and contains the entire understanding between the parties relative to maintenance of the Licensed Programs and, except as provided herein, may be amended and/or altered only by execution of an instrument in writing.
 - Attorney's Fees and Collection Costs - If Support Provider employs an attorney or a collection agency, or both, to collect an amount owed by the Customer or to enforce any rights under this Agreement, the Customer shall pay Support Provider any such reasonable attorney or collection fees and costs incurred in addition to any other relief to which Support Provider may be entitled
 - Billable Services - Services rendered outside of the Service Agreement may be billed to the Customer. Billable services shall be compensated by the Customer at Support Provider's standard hourly rate then in effect plus applicable service trip fee. Additional charges may be incurred for transportation, meals and lodging (applicable to Customers located greater than one-hundred (100) miles from the Support Providers Office). Customers must have a Valid Billing Method on file with Support Provider at all times throughout the life of the Agreement. Valid billing methods include a valid accepted credit card, valid bank account information for Automatic Clearing House (ACH) processing and/or an approved *terms* account. Customers who have *terms* accounts with Support Provider must maintain their accounts in *Good Standing* for *terms* account to be considered a valid billing method. Failure to maintain a Valid Billing Method will result in termination of the agreement.
- 3) Length of Plan - Automatic Renewal
- This Agreement is effective from the commencement date and shall continue for the initial period of twelve (12) months. Thereafter, this Agreement shall automatically be renewed at the then current rates for successive twelve (12) month periods unless terminated sooner by either party on no less than sixty (60) days' prior written notice to the other party.
 - The prices, terms and conditions for such successive term(s) shall be those in effect at the time of renewal.
 - All Agreements shall be billed for one year in advance, unless other payment arrangements are made between the Customer and the Service Provider.
- 4) Charges
- The Service Agreement prices shall be those in effect on the commencement date as set forth above and/or the prices in place at the time of renewal.
- 5) Cancellation of Agreement
- The Customer may terminate this Agreement upon any anniversary of the Commencement Date of this Agreement by giving written notice of such termination no less than sixty (60) days prior to such anniversary date.
 - Support Provider may terminate this Agreement any time if the Customer shall fail make to any required service payment pursuant to the payment terms set forth above, or upon breach of this agreement due to violations of the agreement.
 - Support Provider may terminate the Agreement under the terms defined above (Section 2. b.)
 - Support Provider, at its discretion, may terminate this agreement with a sixty (60) day notice to the Customer.
- 6) Service Agreement Service Hours
- For purposes of this Agreement, the period of Service Agreement accessibility is twenty-four (24) hours continuous, seven (7) days per week.
 - Service Agreement Business Hours are defined at 7:00 AM thru 11:00 PM, seven (7) days per week.
 - Services provided during Support Provider Holidays (which include: New Year's Day, Thanksgiving Day, one Support Provider observed general Holiday and Christmas Day) will be rendered for "Critical Priority" Service Requests only. Service Requests other than "Critical Priority" generated during these days will be rendered on the next Business Day.
 - Emergency Support Hours are defined as 7:00 AM thru 7:00 PM, seven (7) days per week.
- 7) Warranties
- SUPPORT PROVIDER'S OBLIGATIONS AND WARRANTIES UNDER THIS AGREEMENT ARE IN LIEU OF (A) ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE SPECIFICALLY WAIVED AND (B) ALL OTHER OBLIGATIONS OR LIABILITIES FOR DAMAGES INCLUDING, BUT NOT LIMITED TO: 1) PERSONAL INJURY OR PROPERTY DAMAGE, OR 2) LOSS OF PROFIT OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; OR THE MAINTENANCE SERVICE CAUSED DIRECTLY OR INDIRECTLY BY STRIKES, ACCIDENTS, CLIMATIC CONDITIONS, OR REASON OF SIMILAR NATURE BEYOND ITS CONTROL. CUSTOMER AGREES THAT IF SUPPORT PROVIDER CAUSED ANY INJURY OR DAMAGE TO CUSTOMER OR CUSTOMER'S PROPERTY, WHICH SAID CLAIM IS NOT OTHERWISE WAIVED HEREIN, CUSTOMER AGREES THAT THE MAXIMUM AMOUNT THAT SUPPORT PROVIDER SHALL HAVE TO PAY CUSTOMER FOR SAID INJURY OR DAMAGE IS AN AMOUNT EQUAL TO THE AMOUNT PAID FOR SERVICES RENDERED TO THE CUSTOMER THAT CAUSED SAID INJURY OR DAMAGE. SUPPORT PROVIDER WILL NOT BE LIABLE FOR ANY CREDIT CARD DATA BREACHES OR SECURITY COMPROMISES.

SECTION 3) HARDWARE MAINTENANCE AGREEMENT

THIS AGREEMENT COVERS HOW YOU WILL USE AND OBTAIN EXTENDED EQUIPMENT MAINTENANCE AND SUPPORT FOR PROPERLY ENTITLED AND AGREEMENT ENABLED EQUIPMENT PROVIDED BY FOCUS CALIFORNIA.

- 1) Description of Hardware Maintenance
- Hardware Maintenance
 - Subject to the terms and conditions set forth below, Support Provider agrees to provide, and the Customer agrees to purchase Hardware Maintenance, with respect to the purchase POS Hardware (the "Purchased Equipment") set forth in Attachment B (original POS invoice if applicable).
 - In providing Hardware Maintenance to the Customer, Support Provider agrees to perform the following services:
 - Repair or replacement of the Purchase Equipment, upon communication of failure to the Focus Point of Sale Helpdesk.
 - Provide the customer with temporary loaner equipment if a repair cannot be readily made.
 - Provide reasonable remote technical assistance and consultation to the Customer with respect to use of the Purchased Equipment.
 - Any assistance required to fulfill Support Provider's obligations under this Agreement, will be provided at no additional charge unless such assistance is found to be the result of hardware failure, user error, neglect, or negligence. Assistance required because of such failure, user error, neglect or negligence will be compensated by the Customer at Support Provider's standard hourly rate then in effect, plus reasonable expenses for transportation, meals, and lodging.
 - Excluded Service
 - Support Provider is not obligated to provide service under the Agreement for service necessitated by vandalism, theft, misuse, neglect, acts of third parties, fire, water, casualty, act of God, mob violence, labor disputes, malfunction of affiliated equipment not covered by this agreement, unauthorized modification of the Purchase Equipment, electrical failure, accidents, climatic conditions, or from other causes unrelated to the ordinary operation of the software. This Agreement is void if service is performed on the Purchase Equipment by unauthorized individuals, or if attempts are made to modify the Purchase Equipment or use the Purchased Equipment in a manner not set out in the instruction manual or license agreement. Should it be necessary to perform services outlined in this agreement at the Customer's site, Customer shall be responsible for actual out-of-pocket expenses incurred in travel.
 - Response Time
 - There is no guarantee regarding the response time to a service call from the Customer. Support Provider will respond to Hardware service calls in the order received and severity. Support Provider will make every effort to respond within the same workday and will attempt to provide Critical Priority support within four (4) hours. Support Provider has established a priority coding system for each problem reported.
 - Critical Priority - A Purchased Equipment error renders the entire system inoperable (i.e., a single workstation in a one (1) workstation restaurant is inoperable). Resources assigned within fifteen (15) minutes. Resources continue to work on the problem from point of assignment through till completion, regardless of current business hours. A service technician is dispatched to the Purchased Equipment location to arrive within four (4) hours within Support Provider's Emergency Support Hours.
 - High Priority - A Purchased Equipment error is detected for a specific workstation, which seriously impairs operations, however, does not render the system "down" (i.e., a single workstation in a two-plus (2+) workstation restaurant is inoperable). Resources are assigned within one (1) hour, service technicians will be dispatched to arrive within the Support Providers extended Support Hours within the same day or as a "first stop" the next calendar day, based on the discretion of the Support Provider.
 - Medium Priority - A Purchased Equipment error renders a non-critical component of the system inoperable (i.e., a remote printer in a two-plus (2+) remote printer environment "down". Resources are assigned within six (6) hours, service technicians will be dispatched to arrive within Support Provider's standard business hours within the same day or as a "early call" the next business day.
 - Low Priority - A Purchased Equipment error is resolved by the Focus Point of Sale Helpdesk in conjunction with the customer. The Focus Point of Sale Helpdesk determines that the problem may occur again and preemptively takes action. Resources as assigned within 24 (24) hours; service technicians will be dispatched to arrive at the discretion of the Focus Point of Sale Helpdesk.
 - Excused Performance
 - Vendor shall not be liable for any failure to perform or delayed performance of any obligation under the Agreement if such performance is prevented, hindered or delayed for any cause beyond the reasonable control of Support Provider, including, without limitation, any labor dispute, strike or other industrial disturbance, act of God, flood, shortage of materials, earthquakes, casualty, war, act of public enemy, riot, insurrection, embargo law, blockage, action, restriction or regulation or order of any government, government agency or subdivision thereof, any restriction due to Payment Card Industry regulations or best practices, or climatic conditions.
 - Remote Support

- i) The Support Provider maintains a system which allows remote access to the Customer's POS System ("Remote Access"). Client shall not have the right to limit Remote Access by the Support Provider's employees. The Support Provider shall have the right from time to time to alter the means for Remote Access, including, without limitation, designating the means of access and user names/numbers and passwords.
- ii) The Customer will maintain operable standard high-speed internet access to allow for Focus Point of Sale Remote Support
- 2) Breach or Default
 - a) If customer does not pay the amounts due hereunder or breaches any terms of this agreement or any other Agreement with Support Provider, Support Provider may terminate this agreement effective upon written notice to the Customer.
- 3) General
 - a) Free access. Support Provider shall have free access to the equipment and software to perform service thereon.
 - b) Customer agrees to pay all sales taxes where applicable for services rendered pursuant to this agreement.
 - c) Customer shall provide equipment key operators for instruction in use of the equipment.
 - d) Customer shall abide by and adhere to all Payment Card Industry Best Practices as outlined at the Payment Card Industry Security Counsel website www.pcisecuritystandards.org. Failure to comply with Payment Card Industry best practices will void this agreement. The Support Provider is not responsible for any information security breaches, malicious usage of credit card data or damage to information contained within the Licensed Software.
 - e) Assignment - The Customer's rights and obligations created under this Agreement shall not be assignable by the Customer, in whole or in part, by operation of law or otherwise, without the prior written consent of the Support Provider, which shall not be unreasonably withheld. Vendor may terminate this Agreement if the equipment is relocated.
 - f) Construction - The execution and/or acceptance of this agreement shall not effect, in any way, any of the terms and conditions of the Software License granted to the Customer pursuant to the Software License Agreement between the parties.
 - g) Binding Effect - The Customer agrees that this Agreement binds the named Customer and each of its employees, agents and representatives, as well as its successors, assigns and trustees.
 - h) Written Agreement - This Agreement supersedes any prior Agreement written or oral between the parties and contains the entire understanding between the parties relative to maintenance of the Licensed Programs and, except as provided herein, may be amended and/or altered only by execution of an instrument in writing.
 - i) Attorney's Fees and Collection Costs - If Support Provider employs any attorney or a collection agency, or both, to collect an amount owed by the Customer or to enforce any rights under this Agreement, the Customer shall pay Support Provider any such reasonable attorney or collection fees and costs incurred in addition to any other relief to which Support Provider may be entitled
 - j) Billable services - Services rendered outside of the Service Agreement may be billed to the Customer. The Customer shall be notified in advance that services requested or required may be billable. The Customer shall have the opportunity to decline services billable services.
- 4) Length of Plan - Automatic Renewal
 - a) This Agreement is effective from the commencement date and shall continue for the initial period of twelve (12) months. Thereafter, this Agreement shall automatically be renewed at the then current rates for successive twelve (12) month periods unless terminated sooner by either party on no less than sixty (60) days' prior written notice to the other party. The prices, terms and conditions for such successive term(s) shall be those in effect at the time of renewal. All Agreements shall be billed for one year in advance, unless other payment arrangements are made between the Customer and the Service Provider.
- 5) Charges
 - a) The equipment software maintenance prices shall be those in effect on the commencement date as set forth above.
- 6) Cancellation of Agreement
 - a) The Customer may terminate this Agreement upon any anniversary of the Commencement Date of this Agreement by giving written notice of such termination no less than sixty (60) days prior to such anniversary date. Support Provider may terminate this Agreement any time if the Customer shall fail make to any required service payment pursuant to the payment terms set forth above, or upon breach of this agreement due to violations detailed in the Excluded Services portion of the agreement.
- 7) Software Maintenance Service Hours
 - a) Throughout this agreement the Support Providers various business hours have been referenced, the business hours in question are detailed below. In addition to the Support Provider's business hours, the customer's business hours are also taken into account when providing service to this agreement and while in the execution of this agreement. Should the Customer's system require service to be provided outside of the Customer's business hours, the Customer agrees to provide access to the Purchase Equipment during that time and agrees to provide the Support Provider with access to a decision maker during this time.
 - i) Standard Business Hours - Monday thru Friday 8:00 a.m. to 5:00 p.m. Pacific Standard Time
 - ii) Extended Support Hours - Monday thru Saturday 8:00 a.m. to 7:00 p.m. Pacific Standard Time
 - iii) Emergency Support Hours - Monday thru Sunday 7:00 a.m. to 12:00 a.m. Pacific Standard Time
- 8) Warranties
 - a) SUPPORT PROVIDER'S OBLIGATIONS AND WARRANTIES UNDER THIS AGREEMENT ARE IN LIEU OF (A) ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE SPECIFICALLY WAIVED AND (B) ALL OTHER OBLIGATIONS OR LIABILITIES FOR DAMAGES INCLUDING, BUT NOT LIMITED TO: 1) PERSONAL INJURY OR PROPERTY DAMAGE, OR 2) LOSS OF PROFIT OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; OR THE MAINTENANCE SERVICE CAUSED DIRECTLY OR INDIRECTLY BY STRIKES, ACCIDENTS, CLIMATIC CONDITIONS, OR REASON OF SIMILAR NATURE BEYOND ITS CONTROL. CUSTOMER AGREES THAT IF SUPPORT PROVIDER CAUSED ANY INJURY OR DAMAGE TO CUSTOMER OR CUSTOMER'S PROPERTY, WHICH SAID CLAIM IS NOT OTHERWISE WAIVED HEREIN, CUSTOMER AGREES THAT THE MAXIMUM AMOUNT THAT SUPPORT PROVIDER SHALL HAVE TO PAY CUSTOMER FOR SAID INJURY OR DAMAGE IS AN AMOUNT EQUAL TO THE AMOUNT PAID FOR SERVICES RENDERED TO THE CUSTOMER THAT CAUSED SAID INJURY OR DAMAGE. SUPPORT PROVIDER WILL NOT BE LIABLE FOR ANY CREDIT CARD DATA BREACHES OR SECURITY COMPROMISES.

SECTION 4) MONTHLY SUBSCRIPTION AGREEMENT TERMS

THIS AGREEMENT COVERS THE AGREEMENT BETWEEN US AND YOU AS IT PERTAINS TO MONTHLY SERVICES, SUBSCRIPTIONS AND BILLING

1) DEFINITIONS

- a) "Authorized User" means any individual who is approved by Customer to access and use one or more Hosted Services hereunder through the GW POS Inc. Software.
- b) "Hosted Services" means the administration, hosting, management and operation of the Software for remote electronic access and use by Customer and its Authorized Users.
- c) "Software" means the user interfaces, source and object code, upgrades, updates, and other programs, data, know-how, ideas, methodologies, and materials owned or licensed by Focus POS of Arizona, LLC (including open source software) (dba GW POS Inc., hereafter referred to as GW POS Inc.) and any improvements and modifications of the foregoing that GW POS Inc. provides remote access to and use of as part of the Hosted Services and any related technology that GW POS Inc. makes available as part of the Hosted Services.

2) SAAS SERVICES

- a) Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, GW POS Inc. will use commercially reasonable efforts to provide Software modules selected by Customer for remote electronic access and use by Customer and its Authorized Users ("Services"). As part of the registration process, Customer will identify an administrative user name and password for Customer's account. GW POS Inc. reserves the right to refuse registration of, or cancel passwords it deems inappropriate.
- b) Customer shall fully cooperate with and follow the instructions provided by GW POS Inc. in the event that Software modifications, changes, or updates may be needed. If Software is modified or upgraded, the Customer agrees to upgrade its system to accommodate Software upgrades, if necessary. Customer agrees that its failure to cooperate or follow instructions will excuse any performance obligation of GW POS Inc..

3) RESTRICTIONS AND RESPONSIBILITIES

- a) Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any Software, documentation or data related to the Services provided by GW POS Inc. through the Hosted Services; modify, translate, or create derivative works based on the Services or any Software (except to the extent permitted by GW POS Inc. in writing or authorized within the Services); use the Services or any Software for time sharing or service bureau purposes or otherwise for the benefit of a third; or remove any proprietary notices or labels. With respect to any Software that is distributed or provided to Customer for use on Customer premises or devices, GW POS Inc. hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to use such Software during the Term only in connection with the Services.
- b) Customer may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.
- c) Subject to the terms in this Section, Customer will provide Hosted Services to Authorized Users. Customer shall make no representations or warranties regarding the Hosted Services or the Software or any other matter, to Authorized Users or any other third party, from or on behalf of GW POS Inc., and Customer shall not create or purport to create any obligations or liabilities for GW POS Inc.. As part of the registration process, Customer will identify an administrative user name and password for Customer's account. GW POS Inc. may reject any proposed Authorized User for any reason that does not violate applicable law, in its sole discretion. GW POS Inc. reserves the right to refuse registration of, or cancel passwords it deems inappropriate. Customer shall be responsible for the security of passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures required for Authorized Users to access the Hosted Services. Customer shall be jointly and severally liable to GW POS Inc. for Authorized User's compliance with these Terms and Conditions. GW POS Inc. shall have no obligation to provide support or other Hosted Services, SLA remedies, or other remedies to Authorized Users.
- d) Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer accounts and the Equipment.

4) CONFIDENTIALITY; PROPRIETARY RIGHTS

- a) Confidential Information of GW POS Inc. shall include non-public information regarding features, functionality and performance of the Service. Confidential Information of Customer includes non-public data provided by Customer to GW POS Inc. to enable the provision of the Services ("Customer Data").
- b) GW POS Inc. shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing. Customer shall own all right, title and interest in and to the Customer Data. Notwithstanding anything to the contrary, GW POS Inc. shall have the right collect and analyze data and other information relating to the provision, use, and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and GW POS Inc. will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic, and corrective purposes in connection with the Services and other GW POS Inc. offerings, and (ii) disclose such data solely in aggregate or other anonymized form in connection with its business. No other rights or licenses are granted except as expressly set forth herein.

5) PAYMENT OF FEES

- a) Customer will pay GW POS Inc. the then applicable fees described in the Order Form for the Services and Implementation Services in accordance with the terms therein (the "Fees"). If Customer's use of the Services exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of additional fees, Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. GW POS Inc. reserves the right to change the Fees or applicable charges and to institute new charges and Fees upon thirty (30) days prior notice to Customer (which may be sent by email). If Customer believes that GW POS Inc. has billed Customer incorrectly, Customer must contact GW POS Inc. no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to GW POS Inc.'s customer support department.
- b) GW POS Inc. may choose to bill Customer on the 1st day of every month (or the first business day following the 1st day of the month) for the preceding month access and use of the Services. Invoices will be sent electronically or ACH draft for Customers with an automatic payment plan. Customer will provide a voided bank check for the bank account from which the payments will be taken via ACH. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of the Services. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on GW POS Inc.'s net income.

6) TERM AND TERMINATION

- a) Subject to earlier termination as provided below, this Agreement shall begin on the Effective Date and shall remain in effect according to the terms set forth herein until either party terminates this Agreement upon sixty (60) days' notice (or without notice in the case of nonpayment). Customer will pay in full for the Services up to and including the last day on which the Services are provided. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.
- 7) **WARRANTY AND DISCLAIMER**
- a) GW POS Inc. shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Implementation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by GW POS Inc. or by third-party providers, or because of other causes beyond GW POS Inc.'s reasonable control, but GW POS Inc. shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, GW POS INC. DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND GW POS INC. DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- 8) **LIMITATION OF LIABILITY**
- a) NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, GW POS INC. AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND GW POS INC.'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO GW POS INC. FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT GW POS INC. HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 9) **MISCELLANEOUS**
- a) If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with GW POS Inc.'s prior written consent. GW POS Inc. may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind GW POS Inc. in any respect whatsoever. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions.

SECTION 5) MENU MAINTENANCE AGREEMENT

THIS AGREEMENT COVERS SERVICES ENTITLED TO YOU AND THE EXECUTION OF MENU MAINTENANCE SERVICES. THIS SECTION ONLY APPLIES TO CUSTOMERS WITH ACTIVE, VALID & ENTITLED MENU MAINTENANCE AGREEMENTS.

1) Description of Menu Maintenance

- a) **Menu Maintenance**
- i) Subject to the terms and conditions set forth below, Support Provider agrees to provide and the Customer agrees to purchase Menu Maintenance, with respect to the licensed computer programs (the "Licensed Programs") set forth in Attachment B (original POS invoice if applicable).
- ii) In providing Menu Maintenance to the Customer, Support Provider agrees to perform the following services:
- (1) Program POS necessary menu items as provided by the Customer to the Support Provider via approved mediums within the confines of the Request Volume.
- (a) Approved mediums include the Focus Point of Sale web-site's menu maintenance request portal.
- (b) Detailed emails including all applicable information sent to support@mvpavco.com
- (c) Direct ticket entries into the Focus Point of Sale Client Access Portal
- (2) Provide reasonable remote technical assistance and consultation to the Customer with respect to the programming of requested menu items.
- iii) **Request volume & management**
- (a) Menu request volume shall be governed based on the Menu Maintenance Subscription plan selected: Basic – One (1) request of up to fifty (50) main-level menu items and one hundred (100) modifier-level items per calendar quarter. Standard – One (1) request of up to fifty (50) main-level menu items and one hundred (100) modifier-level items per calendar month. Advanced – One (1) request of up to twenty (20) main-level menu items and twenty (20) modifier-level items per calendar week. On-Demand – One (1) request of up to twenty (10) main-level menu items and twenty (20) modifier-level items per business day.
- (b) Requests outside of Subscription Plan are handled on a case by case basis at the discretion of Plan Management.
- iv) Any assistance required to fulfill Support Provider's obligations under this Agreement, will be provided at no additional charge unless such assistance is found to be the result of hardware failure, user error, neglect or negligence. Assistance required as a result of such failure, user error, neglect or negligence will be compensated by the Customer at Support Provider's standard hourly rate then in effect, plus reasonable expenses for transportation, meals and lodging.
- b) **Excluded Service**
- i) Support Provider is not obligated to provide maintenance and/or modification to system usage workflow. Modifications to system usage workflow will be compensated by the Customer at Support Provider's standard hourly rate then in effect.
- ii) Support Provider is not obligated to provide system usage training through the Menu Maintenance Agreement. This include usage training based upon requested menu maintenance modifications.
- iii) Support Provider is not obligated to provide service under the Agreement for service necessitated by vandalism, theft, misuse, hardware malfunction, neglect, acts of third parties, fire, water, casualty, act of God, mob violence, labor disputes, malfunction of affiliated equipment, unauthorized modification of the software, electrical failure, accidents, climatic conditions, or from other causes unrelated to the ordinary operation of the software. This Agreement is void if service is performed on the software by unauthorized individuals, or if attempts are made to modify the software or use the software in a manner not set out in the instruction manual or license agreement. Should it be necessary to perform services outlined in this agreement at the Customer's site, Customer shall be responsible for actual out-of-pocket expenses incurred in travel.
- c) **Response Time**
- i) All menu maintenance requested and prioritized based on the order in which they are received.
- (1) Menu Maintenance Requests must be submitted via an approved medium no later than three (3) business days prior to preferred menu deployment. Customers with Complex Database configurations must submit menu maintenance requests seven (7) business days prior to preferred menu deployment.
- d) **Excused Performance**
- i) Vendor shall not be liable for any failure to perform or delayed performance of any obligation under the Agreement if such performance is prevented, hindered or delayed for any cause beyond the reasonable control of Support Provider, including, without limitation, any labor dispute, strike or other industrial disturbance, act of God, flood, shortage of materials, earthquakes, casualty, war, act of public enemy, riot, insurrection, embargo law, blockage, action, restriction and regulation or order of any government, government agency or subdivision thereof, any restriction due to Payment Card Industry regulations or best practices, or climatic conditions.
- e) **Remote Support**
- i) The Support Provider maintains a system which allows remote access to the Customer's POS System ("Remote Access"). Client shall not have the right to limit Remote Access by the Support Provider's employees. The Support Provider shall have the right from time to time to alter the means for Remote Access, including, without limitation, designating the means of access and user names/numbers and passwords.
- ii) The Customer will maintain operable standard high-speed internet access to the Customer's POS System
- 2) **Breach or Default**
- a) If customer does not pay the amounts due hereunder or breaches any terms of this agreement or any other Agreement with Support Provider, Support Provider may terminate this agreement effective upon written notice to the Customer.
- 3) **General**
- a) Free access. Support Provider shall have free access to the equipment and software to perform service thereon.
- b) Customer agrees to pay all sales taxes where applicable for services rendered pursuant to this agreement.
- c) Customer shall provide equipment key operators for instruction in use of the equipment.
- d) Customer shall abide by and adhere to all Payment Card Industry Best Practices as outlined at the Payment Card Industry Security Council website www.pcisecuritystandards.org. Failure to comply with Payment Card Industry best practices will void this agreement. The Support Provider is not responsible for any information security breaches, malicious usage of credit card data or damage to information contained within the Licensed Software.
- e) Assignment - The Customer's rights and obligations created under this Agreement shall not be assignable by the Customer, in whole or in part, by operation of law or otherwise, without the prior written consent of the Support Provider, which shall not be unreasonably withheld. Vendor may terminate this Agreement if the equipment is relocated.
- f) Construction - The execution of this Support Agreement shall not effect, in any way, any of the terms and conditions of the Software License granted to the Customer pursuant to the Software License Agreement between the parties.
- g) Binding Effect - The Customer agrees that this Agreement binds the named Customer and each of its employees, agents and representatives, as well as its successors, assigns and trustees.
- h) Written Agreement - This Agreement supersedes any prior Agreement written or oral between the parties and contains the entire understanding between the parties relative to maintenance of the Licensed Programs and, except as provided herein, may be amended and/or altered only by execution of an instrument in writing.
- i) Attorney's Fees and Collection Costs - If Support Provider employs any attorney or a collection agency, or both, to collect an amount owed by the Customer or to enforce any rights under this Agreement, the Customer shall pay Support Provider any such reasonable attorney or collection fees and costs incurred in addition to any other relief to which Support Provider may be entitled
- j) Billable services - Services rendered outside of the Service Agreement may be billed to the Customer. The Customer shall be notified in advance that services requested or required may be billable. The Customer shall have the opportunity to decline services billable services.
- 4) **Length of Plan - Automatic Renewal**
- a) This Agreement is effective from the commencement date and shall continue for the initial period of twelve (12) months. Thereafter, this Agreement shall automatically be renewed at the then current rates for successive twelve (12) month periods unless terminated sooner by either party on no less than sixty (60) days' prior written notice to the other party. The prices, terms and conditions for such successive term(s) shall be those in effect at the time of renewal. All Agreements shall be billed for one year in advance, unless other payment arrangements are made between the Customer and the Service Provider.
- 5) **Charges**
- a) The equipment software maintenance prices shall be those in effect on the commencement date as set forth above.
- 6) **Cancellation of Agreement**
- a) The Customer may terminate this Agreement upon any anniversary of the Commencement Date of this Agreement by giving written notice of such termination no less than sixty (60) days prior to such anniversary date. Support Provider may terminate this Agreement any time if the Customer shall fail make to any required service payment pursuant to the payment terms set forth above, or upon breach of this agreement due to violations detailed in the Excluded Services portion of the agreement.
- 7) **Software Maintenance Service Hours**
- a) For purposes of this Agreement, the period of maintenance service availability will be during normal business hours, 8:00 a.m. to 5:00 p.m. (MST), Monday through Friday.
- 8) **Warranties**
- a) SUPPORT PROVIDER'S OBLIGATIONS AND WARRANTIES UNDER THIS AGREEMENT ARE IN LIEU OF (A) ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE SPECIFICALLY WAIVED AND (B) ALL OTHER OBLIGATIONS OR LIABILITIES FOR DAMAGES INCLUDING, BUT NOT LIMITED TO: 1) PERSONAL INJURY OR PROPERTY DAMAGE, OR 2) LOSS OF PROFIT OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; OR THE MAINTENANCE SERVICE CAUSED DIRECTLY OR INDIRECTLY BY STRIKES, ACCIDENTS, CLIMATIC CONDITIONS, OR REASON OF SIMILAR NATURE BEYOND ITS CONTROL. CUSTOMER AGREES THAT IF SUPPORT PROVIDER CAUSED ANY INJURY OR DAMAGE TO CUSTOMER OR CUSTOMER'S PROPERTY, WHICH SAID CLAIM IS NOT OTHERWISE WAIVED HEREIN,

CUSTOMER AGREES THAT THE MAXIMUM AMOUNT THAT SUPPORT PROVIDER SHALL HAVE TO PAY CUSTOMER FOR SAID INJURY OR DAMAGE IS AN AMOUNT EQUAL TO THE AMOUNT PAID FOR SERVICES RENDERED TO THE CUSTOMER THAT CAUSED SAID INJURY OR DAMAGE. SUPPORT PROVIDER WILL NOT BE LIABLE FOR ANY CREDIT CARD DATA BREACHES OR SECURITY COMPROMISES.

SECTION 6) GENERAL TERMS & CONDITIONS OF SALE

THE TERMS & CONDITIONS GOVERN THE FINANCIAL SELLER/BUYER RELATIONSHIP BETWEEN FOCUS POS OF ARIZONA, LLC (DBA GW POS INC. AND THE SELLER) AND YOU AND/OR THE COMPANY YOU ARE ACTING ON BEHALF OF (BUYER)

- 1) Acceptance of Terms and Conditions.
 - a) Seller's acceptance of all purchase orders is expressly conditioned upon Buyer's consent to, either express or implied, these terms and conditions, and Seller will not accept, and expressly rejects, any other terms and conditions (whether written or oral) originating from Buyer that purport to modify, add to, or otherwise vary the terms and conditions stated herein. Buyer's acceptance of these terms and conditions shall be indicated by any of the foregoing: (a) Buyer's written acknowledgement or other act or expression of acceptance, (b) Buyer's offer to purchase products from Seller, or (c) Buyer's acceptance of shipment from Seller.
- 2) Shipment/Title/Risk of Loss/Taxes.
 - a) Title to the product shall pass to Buyer upon delivery of product to the common carrier or Buyer's representative at Seller's dock or any other location directed by Buyer. All risk of loss, damage, theft or destruction to the product shall be borne by Buyer at F.O.B. shipping point. No such loss, damage, theft or destruction to the product, in whole or in part, shall impair the obligations of Buyer under this agreement, all of which shall continue in full force and effect. Seller shall not be liable for any shipping delays. Buyer shall bear all applicable federal, state, municipal or other governmental tax, as well as any applicable import or customs duties, license fees and similar charges, however designated or levied on the sale of products (or delivery thereof) or measured by the purchase price paid for the products.
- 3) Shortages/Rejection of Delivery.
 - a) All claims for shortages or rejection of delivery must be made by Buyer to Seller in writing within a period of forty-eight (48) hours from receipt of product and must state in reasonable detail the grounds therefore. Unless such notice is given within the stated period of time, Buyer agrees that it shall be conclusively presumed that Buyer has fully inspected the product and acknowledged that NO shortage or grounds for rejection exists.
- 4) Security Interest.
 - a) Buyer grants Seller a security interest in all products sold hereunder and to all products now or hereafter acquired by Buyer from Seller, and to any proceeds thereof, until the purchase price and any other amounts due to Seller have been paid in their entirety. Buyer agrees promptly to execute any financing statement or other documents requested by Seller in order to protect Seller's security interest. Upon any default by Buyer of any of its obligations to Seller, Seller shall have all the rights and remedies of a secured party under the Uniform Commercial Code, which rights and remedies shall be cumulative and not exclusive.
- 5) Payment.
 - a) Unless otherwise agreed in writing by Seller, all credit purchases must be paid in accordance with Seller's normal terms of sale, which are COD. All past due amounts are subject to a one and a half percent (1.5%) monthly financing charge or the maximum permissible under applicable law. All drafts dishonored for any reason shall be assessed a twenty-five dollar and 00/100 (\$25.00) service charge. In the event that Buyer stops payment on any drafts issued to Seller, for any reason, Buyer hereby recognizes that Seller would suffer damage, the exact amount of which cannot be determined with certainty, and Buyer shall pay Seller liquidated damages in the amount of five hundred and 00/100 (\$500) for each such draft in addition to the purchase price. Buyer may not take anticipated credit memo before Seller issues the credit on account. Payment using an anticipated credit memo before Seller has issued credit, will be considered short payments and may result in delayed shipments. It is not our policy to issue refunds. Credit memos must be used on current outstanding balance or future purchases. In the event that Buyer utilizes a credit card to purchase products, Buyer agrees not unnecessarily to dispute such charges and further agrees to use best efforts to resolve any good faith dispute. Seller has no continuing obligation to deliver products on credit. Seller may extend credit to Buyer for purchase of products to the extent Buyer may be eligible under the applicable Seller's programs and consistent with Buyer's credit capability, as determined by Seller from time to time in Seller's absolute discretion. In the event that Buyer's account become dormant with Seller for more than six (6) months and is in a credit balance. Buyer agrees that Seller may impose due to dormancy a monthly administrative charge for inactivity at a rate of the lesser of ten dollars and 00/100 (\$10) a month or the credit balance outstanding on Buyer's account.
- 6) Returns.
 - a) The terms for all product returns, for whatever reason, are limited to those set forth in Seller's return merchandise authorization ("RMA") policies and procedures, which may be modified in any manner by Seller at any time. All returns must be accompanied by an RMA from Seller. All returns are subject to in-house credit only. The time allowed for returns is determined by product manufacturers, printed in Seller's catalogue.
- 7) No Warranties by Seller.
 - a) Unless otherwise noted, the seller makes no warranties regarding the products contained in this sale. Manufacturer's warranties may apply. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES OR DAMAGES OF ANY KIND OR NATURE ALLEGED TO HAVE RESULTED FROM ANY BREACH OF WARRANTY. SELLER DOES NOT WARRANT THE MERCHANTABILITY OF THE PRODUCTS OR THEIR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER SHALL HAVE NO DUTY TO DEFEND, INDEMNIFY, AND HOLD HARMLESS PURCHASER FROM AND AGAINST ANY OR ALL DAMAGES AND COST INCURRED BY PURCHASER ARISING FROM THE INFRINGEMENT OF PATENTS OR TRADEMARKS OR THE VIOLATION OF COPYRIGHTS BY PRODUCTS. SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED. NOTWITHSTANDING ANY OTHER TERMS OR CONDITIONS TO THE CONTRARY, SELLER'S LIABILITY UNDER THIS SECTION SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCT.
- 8) Events of Default.
 - a) Buyer shall be in default under this agreement upon the happening of any of the following events or conditions: (a) default by Buyer on payment of any installment, invoice, bill or any other indebtedness or obligation now or hereafter owed by Buyer to Seller, (b) default in the performance of any obligation, covenant or liability contained in this agreement or any other agreement or document between Buyer and Seller, (c) any inaccuracy with respect to any warranty, representation or statement made or furnished by Buyer, and (d) dissolution, termination of existence, insolvency, business failure, or discontinuance of Buyer's business or the appointment of a receiver for any part of the property of, or assignment for the benefit of creditors by, Buyer or the commencement of any proceedings under any bankruptcy reorganization or arrangement laws by or against Buyer or the attachment, levy, seizure or garnishment of any of Buyer's property, rights, assets (contingent or otherwise) or the product, (e) any change, however, arising, in the ownership or management of Buyer, unless prior to the occurrence of such change in ownership or management Seller shall have been notified of the change in writing and Buyer shall have obtained Seller's prior written approval to such change.
- 9) Remedies of Seller.
 - a) In General. Upon the occurrence of any event of default or any time thereafter, Seller may, at its option and without notice to Buyer, exercise one or more of the following remedies as Seller, in its sole discretion, shall elect: (1) demand or, without demand, sue for amounts then due or thereafter accruing under any invoice, bill or other documentation evidencing Buyer's indebtedness, (2) suspend deliveries as to any or all product, (3) take possession of the product wherever found and for this purpose enter upon any premises of Buyer and remove the product, without court order or other process of law, without any liability for damages, suit, action or other proceeding by Buyer as a result of such entry and/or removal, (4) cause Buyer, at its expense, to promptly return the product to Seller in good, like-new condition, (5) sell the goods, or any part thereof at public or private sale (for cash or credit) at such time or times as Seller shall determine, free and clear of any rights of Buyer, and if notice thereof is required by law, any notice in writing of any such sale by Seller to Buyer not less than ten days prior to the date thereof shall constitute reasonable notice thereof to Buyer, and (6) exercise any and all rights accruing to Seller under any applicable contract or law upon a default by Buyer.
 - b) Mitigation of Damages. Should Seller repossess any of the product because of Buyer's default, Seller may make a commercially reasonable effort to sell such product at a reasonable price to a third party, provided, however, that Seller shall have no obligation to actively seek out and solicit potential third party Buyers for said products.
 - c) Collection Costs. In the event of any default on the part of Buyer hereunder, Buyer shall pay any and all collection costs, including reasonable attorneys' fees and costs, incurred by Seller. D. Rights and Remedies Not Exclusive. No right or remedy conferred upon or reserved to Seller by this agreement shall be exclusive of any other right or remedy provided herein or by law. All rights or remedies conferred upon Seller by this agreement and by law shall be cumulative and in addition to any other right or remedy available to Seller. E. Service & Support Suspension or Termination. The Seller has the right, as the Seller's discretion, to otherwise suspend or terminate service and/or support of the sold items should the Buyer default on the terms and conditions of sale. This is including failure to make proper payments and/or breach of payment terms. The Seller, at the Seller's discretion, will reinstate service & support of the sold items once full and proper payment has been made by the Buyer.
- 10) Time of the Essence.
 - a) Time is of the essence of this agreement.
- 11) Indemnification.
 - a) Buyer agrees to indemnify and hold Seller and their officers, directors, servants, employees, agents and advisors harmless from and against any and all claims, damages, costs, expenses (including, but not limited to, reasonable attorneys' fees and costs) or liabilities that may result, in whole or in part, from any third party using the product provided under this agreement. Any defense provided hereunder shall be by counsel of Seller's choice.
- 12) Limitation of Liability.
 - a) In the event that a product's malfunction leads to damage or injuries to the product, to Buyer's business, the end-user's business, to other equipment, or residence, or to employees or to other persons, Seller shall not be liable for such damages or injuries. Buyer understands and agrees that if Seller shall be found liable for loss or damage caused by failure of Seller to perform any of Seller's obligations hereunder or the failure of the product in any respect whatsoever, Seller's liability shall be limited to the price paid for such product, and this liability shall be exclusive. Buyer understands and agrees that the provisions of this section shall apply if loss or damage, irrespective of cause or origin, results directly or indirectly to persons or property, from performance or nonperformance of any of Seller's obligations or from negligence, active or otherwise, of Seller, or its agents, servants, assignees or employees. IN NO EVENT SHALL SELLER BE LIABLE FOR AMOUNTS REPRESENTING INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 13) Assignment.
 - a) This agreement and all rights, obligations and performance hereunder may not be assigned without prior written consent of Seller.
- 14) Waiver.
 - a) No delay or omission by Seller to exercise any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by Seller of any term, condition or agreements to be performed by Buyer or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other term, condition or agreement herein contained. No change, waiver, or discharge hereof shall be valid unless presented in writing to Seller and signed by an authorized representative of Seller.
- 15) Severability.
 - a) If any section, term, condition or portion thereof shall be found to be illegal or void as being against public policy, it shall be stricken and the remainder of this document shall stand as the original. ALL SALES TRANSACTIONS EXCLUDE THE APPLICATION OF THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALES OF GOODS, IF OTHERWISE APPLICABLE.
- 16) Governing Law/Venue.
 - a) This agreement shall be construed and enforced in accordance with the laws of Arizona without regard to the conflicts of law provisions thereof. All claims, actions, disputes, controversies or suits shall be litigated exclusively in the courts of California. Each party specifically consents to service of process by and the jurisdiction of and venue in those courts and Buyer, if not a resident of the United States, hereby appoints the Secretary of State of California as its agent for service of process in the United States.
- 17) Entire Agreement/Modification.
 - a) The parties intend this agreement to be the complete statement of the terms of their agreement. This agreement replaces and supersedes any prior agreements between them with respect to the subject matter hereof. No course of prior dealing or usage of trade shall be relevant to amend or interpret this agreement. This agreement may not be changed modified or amended except by an instrument in writing signed by Seller and Buyer.